

Senate Bill No. 658

CHAPTER 583

An act to amend Sections 790.034 and 2071 of, and to add Sections 790.031, 2071.1, and 10082.3 to, the Insurance Code, relating to insurance.

[Approved by Governor October 5, 2001. Filed with
Secretary of State October 7, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

SB 658, Escutia. Insurance.

Existing law provides for regulation of insurers by the Insurance Commissioner and requires that regulations adopted by the commissioner take into consideration settlement practices by classes of insurers. Existing law establishes a standard form of fire insurance policy for this state. Existing law prohibits a person from engaging in specified unfair methods of competition and deceptive acts or practices in the business of insurance.

This bill would require an insurer to provide certain insureds with information relating to unfair methods of competition and deceptive acts or practices in the business of insurance in its initial response to a claim. The bill would modify the standard form of fire insurance policy for this state relative to the obligations of the insured and insurer and to appraisals, adjusters, and loss requirements for a policy originated or renewed on and after January 1, 2002.

The bill would also require that all conditions applicable to loss requirements, appraisals, and adjusters contained in standard form fire insurance policies apply to residential property insurance policies, policies providing coverage for loss or damage caused by earthquake, and basic residential earthquake insurance policies that are originated or renewed on and after January 1, 2002.

The bill would make other related changes.

The people of the State of California do enact as follows:

SECTION 1. Existing legal protections for insurance policyholders proved to be inadequate after the Northridge earthquake. The public requires additional safeguards against unfair claim settlement practices by insurance companies. It is the intent of the Legislature that the provisions of this act add basic consumer protections to those currently set forth in the Insurance Code and supporting regulations. It is also the

intent of the Legislature that the provisions of this act apply to all residential property insurance policies sold in the state, including, but not limited to, residential fire insurance policies, residential property insurance policies, basic residential earthquake insurance policies, and policies issued by the California Earthquake Authority.

SEC. 2. Section 790.031 is added to the Insurance Code, to read:

790.031. The requirements of subdivision (b) of Section 790.034, and Sections 2071.1 and 10082.3 shall apply only to policies of residential property insurance as defined in Section 10087, policies and endorsements containing those coverages prescribed in Chapter 8.5 (commencing with Section 10081) of Part 1 of Division 2, policies issued by the California Earthquake Authority pursuant to Chapter 8.6 (commencing with Section 10089.5) of Part 1 of Division 2, policies and endorsements that insure against property damage and are issued to common interest developments or to associations managing common interest developments, as those terms are defined in Section 1351 of the Civil Code, and to policies issued pursuant to Section 120 that insure against property damage to residential units or contents thereof owned by one or more persons located in this state.

SEC. 3. Section 790.034 of the Insurance Code is amended to read:

790.034. (a) Regulations adopted by the commissioner pursuant to this article that relate to the settlement of claims shall take into consideration settlement practices by classes of insurers.

(b) (1) Upon receiving notice of a claim, every insurer shall immediately, but no more than 15 calendar days after receipt of the claim, provide the insured with a legible reproduction of Section 790.03 of the Insurance Code, in at least 12-point type and a written notice containing the following:

“In addition to Section 790.03 of the Insurance Code provided here, Fair Claims Settlement Practices Regulations govern how insurance claims must be processed in this state. These regulations are available at the Department of Insurance Internet site, www.insurance.ca.gov. You may also obtain a copy of these regulations free of charge from this insurer.”

(2) Every insurer shall provide, whether requested orally or in writing by an insured, a copy of the Fair Claims Settlement Practices Regulations as set forth in Sections 2695.5, 2695.7, 2695.8, and 2695.9 of subchapter 7.5 of Chapter 5 of Title 10 of the California Code of Regulations, unless the regulations are inapplicable to that class of insurer. These regulations shall be provided to the insured within 15 calendar days of request.



(3) The provisions of this subdivision shall apply to all insurers except for those that are licensed pursuant to Chapter 1 (commencing with Section 12340) of Part 6 of Division 2, with respect to policies and endorsements described in Section 790.031.

SEC. 4. Section 2071 of the Insurance Code is amended to read:

2071. (a) The following is adopted as the standard form of fire insurance policy for this state:

California Standard Form Fire Insurance Policy

No.

[Space for insertion of name of company or companies issuing the policy and other matter permitted to be stated at the head of the policy.]

[Space for listing amounts of insurance, rates and premiums for the basic coverages insured under the standard form of policy and for additional coverages or perils insured under endorsements attached.]

In consideration of the provisions and stipulations herein or added hereto and of _____ dollars premium this company, for the term of

_____ from the _____ day of _____, 20____ } At 12:01 a.m.,
to the _____ day of _____, 20____ } standard time,
at location of property involved, to an amount not exceeding _____ dollars, does insure _____ and legal representatives, to the extent of the actual cash value of the property at the time of loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality within a reasonable time after the loss, without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair, and without compensation for loss resulting from interruption of business or manufacture, nor in any event for more than the interest of the insured, against all LOSS BY FIRE, LIGHTNING AND BY REMOVAL FROM PREMISES ENDANGERED BY THE PERILS INSURED AGAINST IN THIS POLICY, EXCEPT AS HEREINAFTER PROVIDED, to the property described hereinafter while located or contained as described in this policy, or pro rata for five days at each proper place to which any of the property shall necessarily be removed for preservation from the perils insured against in this policy, but not elsewhere.

Assignment of this policy shall not be valid except with the written consent of this company.

This policy is made and accepted subject to the foregoing provisions and stipulations and those hereinafter stated, which are hereby made a part of this policy, together with any other provisions, stipulations and agreements as may be added hereto, as provided in this policy.



IN WITNESS WHEREOF, this company has executed and attested these presents; but this policy shall not be valid unless countersigned by the duly authorized agent of this company at

Countersigned this _____ day of _____, 20 ____
Secretary. President.
_____ Agent

Concealment, fraud

This entire policy shall be void if, whether before or after a loss, the insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the insured therein, or in case of any fraud or false swearing by the insured relating thereto.

Uninsurable and excepted property

This policy shall not cover accounts, bills, currency, deeds, evidences of debt, money or securities; nor, unless specifically named hereon in writing, bullion or manuscripts.

Perils not included

This company shall not be liable for loss by fire or other perils insured against in this policy caused, directly or indirectly, by: (a) enemy attack by armed forces, including action taken by military, naval or air forces in resisting an actual or an immediately impending enemy attack; (b) invasion; (c) insurrection; (d) rebellion; (e) revolution; (f) civil war; (g) usurped power; (h) order of any civil authority except acts of destruction at the time of and for the purpose of preventing the spread of fire, provided that the fire did not originate from any of the perils excluded by this policy; (i) neglect of the insured to use all reasonable means to save and preserve the property at and after a loss, or when the property is endangered by fire in neighboring premises; (j) nor shall this company be liable for loss by theft.

Other insurance

Other insurance may be prohibited or the amount of insurance may be limited by endorsement attached hereto.



Conditions suspending or restricting insurance

Unless otherwise provided in writing added hereto this company shall not be liable for loss occurring (a) while the hazard is increased by any means within the control or knowledge of the insured; or (b) while a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of 60 consecutive days; or (c) as a result of explosion or riot, unless fire ensues, and in that event for loss by fire only.

Other perils or subjects

Any other peril to be insured against or subject of insurance to be covered in this policy shall be by endorsement in writing hereon or added hereto.

Added provisions

The extent of the application of insurance under this policy and of the contribution to be made by this company in case of loss, and any other provision or agreement not inconsistent with the provisions of this policy, may be provided for in writing added hereto, but no provision may be waived except such as by the terms of this policy or by statute is subject to change.

Waiver provisions

No permission affecting this insurance shall exist, or waiver of any provision be valid, unless granted herein or expressed in writing added hereto. No provision, stipulation or forfeiture shall be held to be waived by any requirement or proceeding on the part of this company relating to appraisal or to any examination provided for herein.

Cancellation of policy

This policy shall be canceled at any time at the request of the insured, in which case this company shall, upon demand and surrender of this policy, refund the excess of paid premium above the customary short rates for the expired time. This policy may be canceled at any time by this company by giving to the insured a five days' written notice of cancellation with or without tender of the excess of paid premium above the pro rata premium for the expired time, which excess, if not tendered,



shall be refunded on demand. Notice of cancellation shall state that said excess premium (if not tendered) will be refunded on demand.

Mortgagee interests and obligations

If loss hereunder is made payable, in whole or in part, to a designated mortgagee not named herein as the insured, the interest in this policy may be canceled by giving to the mortgagee a 10 days' written notice of cancellation.

If the insured fails to render proof of loss the mortgagee, upon notice, shall render proof of loss in the form herein specified within sixty (60) days thereafter and shall be subject to the provisions hereof relating to appraisal and time of payment and of bringing suit. If this company shall claim that no liability existed as to the mortgagor or owner, it shall, to the extent of payment of loss to the mortgagee, be subrogated to all the mortgagee's rights of recovery, but without impairing mortgagee's right to sue; or it may pay off the mortgage debt and require an assignment thereof and of the mortgage. Other provisions relating to the interests and obligations of the mortgagee may be added hereto by agreement in writing.

Pro rata liability

This company shall not be liable for a greater proportion of any loss than the amount hereby insured shall bear to the whole insurance covering the property against the peril involved, whether collectible or not.

Requirements in case loss occurs

The insured shall give written notice to this company of any loss without unnecessary delay, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed, damaged and undamaged property, showing in detail quantities, costs, actual cash value and amount of loss claimed; and within 60 days after the loss, unless the time is extended in writing by this company, the insured shall render to this company a proof of loss, signed and sworn to by the insured, stating the knowledge and belief of the insured as to the following: the time and origin of the loss, the interest of the insured and of all others in the property, the actual cash value of each item thereof and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering



any of said property, any changes in the title, use, occupation, location, possession or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies and, if required and obtainable, verified plans and specifications of any building, fixtures or machinery destroyed or damaged.

The insured, as often as may be reasonably required and subject to the provisions of Section 2071.1, shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examinations under oath by any person named by this company, and subscribe the same; and, as often as may be reasonably required, shall produce for examinations all books of account, bills, invoices, and other vouchers, or certified copies thereof if the originals be lost, at any reasonable time and place as may be designated by this company or its representative, and shall permit extracts and copies thereof to be made. The insurer shall inform the insured that tax returns are privileged against disclosure under applicable law but may be necessary to process or determine the claim.

The insurer shall notify every claimant that they may obtain, upon request, copies of claim-related documents. For purposes of this section, “claim-related documents” means all documents that relate to the evaluation of damages, including, but not limited to, repair and replacement estimates and bids, appraisals, scopes of loss, drawings, plans, reports, third party findings on the amount of loss, covered damages, and cost of repairs, and all other valuation, measurement, and loss adjustment calculations of the amount of loss, covered damage, and cost of repairs. However, attorney work product and attorney-client privileged documents, and documents that indicate fraud by the insured or that contain medically privileged information, are excluded from the documents an insurer is required to provide pursuant to this section to a claimant. Within 15 calendar days after receiving a request from an insured for claim-related documents, the insurer shall provide the insured with copies of all claim-related documents, except those excluded by this section. Nothing in this section shall be construed to affect existing litigation discovery rights.

Appraisal

In case the insured and this company shall fail to agree as to the actual cash value or the amount of loss, then, on the written request of either, each shall select a competent and disinterested appraiser and notify the



other of the appraiser selected within 20 days of the request. Where the request is accepted, the appraisers shall first select a competent and disinterested umpire; and failing for 15 days to agree upon the umpire, then, on request of the insured or this company, the umpire shall be selected by a judge of a court of record in the state in which the property covered is located. Appraisal proceedings are informal unless the insured and this company mutually agree otherwise. For purposes of this section, “informal” means that no formal discovery shall be conducted, including depositions, interrogatories, requests for admission, or other forms of formal civil discovery, no formal rules of evidence shall be applied, and no court reporter shall be used for the proceedings. The appraisers shall then appraise the loss, stating separately actual cash value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with this company shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting him or her and the expenses of appraisal and umpire shall be paid by the parties equally. In the event of a government-declared disaster, as defined in the Government Code, appraisal may be requested by either the insured or this company but shall not be compelled.

Adjusters

If, within a six-month period, the company assigns a third or subsequent adjuster to be primarily responsible for a claim, the insurer, in a timely manner, shall provide the insured with a written status report. For purposes of this section, a written status report shall include a summary of any decisions or actions that are substantially related to the disposition of a claim, including, but not limited to, the amount of losses to structures or contents, the retention or consultation of design or construction professionals, the amount of coverage for losses to structures or contents and all items of dispute.

Company’s options

It shall be optional with this company to take all, or any part, of the property at the agreed or appraised value, and also to repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within 30 days after the receipt of the proof of loss herein required.



Abandonment

There can be no abandonment to this company of any property.

When loss payable

The amount of loss for which this company may be liable shall be payable 60 days after proof of loss, as herein provided, is received by this company and ascertainment of the loss is made either by agreement between the insured and this company expressed in writing or by the filing with this company of an award as herein provided.

Suit

No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, and unless commenced within 12 months next after inception of the loss.

Subrogation

This company may require from the insured an assignment of all right of recovery against any party for loss to the extent that payment therefor is made by this company.

(b) Any amendments to this section by the enactment of Senate Bill 658 of the 2001–02 Regular Session shall govern a policy utilizing the form provided in subdivision (a) when that policy is originated or renewed on and after January 1, 2002.

SEC. 5. Section 2071.1 is added to the Insurance Code, to read:

2071.1. (a) This section applies to an examination of an insured under oath pursuant to Section 2071 labeled “Requirements in case loss occurs” and other relevant provisions of that section, and to any policy that insures property and contains a provision for examining an insured under oath, when the policy is originated or renewed on and after January 1, 2002.

The following are among the rights of each insured who is requested to submit to an examination under oath:

(1) An insurer that determines that it will conduct an examination under oath of an insured shall notify the insured of that determination and shall include a copy of this section in the notification.

(2) An insurer may conduct an examination under oath only to obtain information that is relevant and reasonably necessary to process or investigate the claim.



(3) An examination under oath may only be conducted upon reasonable notice, at a reasonably convenient place and for a reasonable length of time.

(4) The insured may be represented by counsel and may record the examination proceedings in their entirety.

(5) The insurer shall notify the insured that, upon request and free of charge, it will provide the insured with a copy of the transcript of the proceedings and a tape of the proceedings, if one exists. Where an insured requests a copy of the transcript, the tape, or both, of their examination under oath, the insurer shall provide it within 10 business days of receipt by the insurer or its counsel of the transcript, the tape, or both. An insured may make sworn corrections to the transcript so it accurately reflects the testimony under oath.

(6) In an examination under oath, an insured may assert any objection that can be made in a deposition under state or federal law. However, if as a result of asserting an objection an insured fails to provide an answer to a material question, and that failure prevents the insurer from being able to determine the extent of loss and validity of the claim, the rights of the insured under the contract may be affected.

(7) An insured who submits a fraudulent claim may be subject to all criminal and civil penalties applicable under law.

(b) The department shall conduct a study quantifying the number of examinations under oath performed by carriers regulated by the department and the number of contacts made by consumers regarding alleged concerns with the utilization of the examination under oath process for the resolution of pending claims. The department shall report both the number of examinations under oath performed by each carrier and the number of justified and unjustified claims alleged by insureds as defined in the Insurance Code. To the best extent practicable, the department shall also determine if any of these complaints also resulted in suspected fraudulent claims with the department's fraud division.

(c) The department shall also survey licensed carriers as to the number of suspected fraudulent claims under residential property insurance policies that are submitted to the department's fraud division as required by law, and that resulted, or eventually resulted, in the utilization of the examination under oath process. Policies of residential property insurance shall be as defined in Section 10087.

(d) The department shall submit the findings of this report to the Chairs of the Assembly and Senate Committees on Insurance no later than March 1, 2003.

SEC. 6. Section 10082.3 is added to the Insurance Code, to read:

10082.3. Notwithstanding any other provision of law, the following provisions regarding loss requirements, appraisals, and adjusters shall



apply to the following types of policies originated or renewed on and after January 1, 2002: all policies of residential property insurance, as defined in Section 10087, all policies, endorsements, or certificates of insurance providing coverage for loss or damage caused by the peril of earthquake issued pursuant to this chapter; and all policies of basic residential earthquake insurance issued pursuant to Chapter 8.6 (commencing with Section 10089.5).

Requirements in case loss occurs

The insured shall give written notice to this company of any loss without unnecessary delay, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed, damaged and undamaged property, showing in detail quantities, costs, actual cash value and amount of loss claimed; and within 60 days after the loss, unless the time is extended in writing by this company, the insured shall render to this company a proof of loss, signed and sworn to by the insured, stating the knowledge and belief of the insured as to the following: the time and origin of the loss, the interest of the insured and of all others in the property, the actual cash value of each item thereof and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupation, location, possession or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies and, if required and obtainable, verified plans and specifications of any building, fixtures or machinery destroyed or damaged. The insured, as often as may be reasonably required and subject to the provisions of Section 2071.1, shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examinations under oath by any person named by this company, and subscribe the same; and, as often as may be reasonably required, shall produce for examination all books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by this company or its representative, and shall permit extracts and copies thereof to be made. The insurer shall inform the insured that tax returns are privileged against disclosure under applicable state law but may be necessary to process or determine the claim.



The insurer shall notify every claimant that they may obtain, upon request, copies of claim-related documents. For purposes of this section, “claim-related documents” means all documents that relate to the evaluation of damages, including, but not limited to, repair and replacement estimates and bids, appraisals, scopes of loss, drawings, plans, reports, third party findings on the amount of loss, covered damages, and cost of repairs, and all other valuation, measurement, and loss adjustment calculations of the amount of loss, covered damage, and cost of repairs. However, attorney work product and attorney-client privileged documents, and documents that indicate fraud by the insured or that contain medically privileged information, are excluded from the documents an insurer is required to provide pursuant to this section to a claimant. Within 15 calendar days after receiving a request from an insured for claim-related documents, the insurer shall provide the insured with copies of all claim-related documents, except those excluded by this section. Nothing in this section shall be construed to affect existing litigation discovery rights.

Appraisal

In case the insured and this company shall fail to agree as to the actual cash value or the amount of loss, then, on the written request of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of the request. Where the request is accepted, the appraisers shall first select a competent and disinterested umpire; and failing for 15 days to agree upon the umpire, then, on request of the insured or this company, the umpire shall be selected by a judge of a court of record in the state in which the property covered is located. Appraisal proceedings are informal unless the insured and this company mutually agree otherwise. For purposes of this section, “informal” means that no formal discovery shall be conducted, including depositions, interrogatories, requests for admission, or other forms of formal civil discovery, no formal rules of evidence shall be applied, and no court reporter shall be used for the proceedings. The appraisers shall then appraise the loss, stating separately actual cash value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with this company shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting him or her and the expenses of appraisal and umpire shall be paid by the parties equally. In the event of a government-declared disaster, as defined in the Government Code, appraisal may be requested by either the insured or this company but shall not be compelled.



Adjusters

If, within a six-month period, the company assigns a third or subsequent adjuster to be primarily responsible for a claim, the insurer, in a timely manner, shall provide the insured with a written status report. For purposes of this section, a written status report shall include a summary of any decisions or actions that are substantially related to the disposition of a claim, including, but not limited to, the amount of losses to structures or contents, the retention or consultation of design or construction professionals, the amount of coverage for losses to structures or contents and all items of dispute.

